Attorney Docket No.: 6570P015 **PATENT**
Client Docket No.: 2003P00340US

PRE-APPEAL BRIEF REQUEST FOR REVIEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	
Martin Runte et al.	Examiner: Qing Chen
	Art Unit: 2191
Application No: 10/687,233	
	Confirmation No: 8107
Filed: October 15, 2003	
For: TOOLS PROVIDING FOR BACKWARDS COMPATIBLE SOFTWARE	

Mail Stop AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Final Office Action mailed June 4, 2007, and the Advisory Action mailed August 14, 2007, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully requests review of the Final rejection of the claims of the above referenced application in view of the following.

Filed via EFS web September 4, 2007

REMARKS

Claims 1-25 and 32-35 are pending in the above-referenced patent application, of which claims 1, 6, 22, and 32 are independent claims. These independent claims are the main subject of this Request. These claims were finally rejected in the Final Office Action of June 4, 2007, under 35 U.S.C. § 102(e) as being anticipated by Carter (USPN 6,519,767). Carter is the primary reference relied upon by the Office, and will be the focus of the discussion herein.

The independent claims each recite limitations directed to identifying a change of a software object of a first software subsystem used by a second software subsystem, and determining compatibility of the change with the second software subsystem.

The Final Office Action at pages 25-26 asserts that the object servers of the Carter reference discloses the claimed software objects. Specifically, the Final Office Action at page 26 asserts that because the object server is an "executable file," it is a program, and thus a software object. The assertion is repeated in the Advisory Action at the Continuation page, stating:

> the executable file of Carter et al. can be interpreted, under the broadest reasonable treatment, as a software object in accordance with the exemplary definition of a software object provided by the originally-filed specification as to include programs. One of ordinary skill in the art would clearly associate an executable file as a program."

Applicants submit that the assertion in the Office Actions represents a misapplication of the standards for examination. Per MPEP § 2111, "During patent examination, the pending claims must be 'given their **broadest reasonable interpretation consistent with the specification**.'" Citations omitted, emphasis added. This principle was violated in the Office Actions because the interpretation used to reject the claims is inconsistent with the specification, as Applicants have previously argued. Applicants repeat that the reasoning in the Final Office Action is contrary to what would be understood by one of skill in the art.

The Final Office Action makes reference to paragraph [0017] of Applicants' Description, which states: "The term 'object', as used herein, means a software object including, but not limited to, function modules, programs, data objects, classes, class components, attributes, etc." Thus, Applicants' disclosure refers to an object as a "program." Carter refers to "executable files" as "programs." Applicants note that one of skill in the art would appreciate that there are two separate meanings for the term "program." One definition is consistent with Carter, which is that

an executable file (an application) is sometimes referred to as a program. However, a program does not necessarily mean an application.

The second, distinct definition of a program is referred to in Applicants' paragraph [0017], referring to a function module, routine, or subroutine callable in an application (not being the application itself), to perform a certain function, algorithm, method, etc. The second definition is consistent with Applicants' Specification, which refers to programs in the same context as "classes, class components, [and] attributes." The first definition would be inconsistent with a discussion of "classes, class components, [and] attributes." The term program in Applicants' Specification appears only in paragraph [0017].

Applicants submit that the reasoning in the Office Action is similar to the following hypothetical situation. Consider a patent application that made reference to "pointing devices such as a mouse, a trackball, or a touchpad." Then consider that a hypothetical Office Action cited a reference that referred to a rodent, and specifically a mouse. The hypothetical Office Action may proffer that one of skill in the art would understand that a mouse can refer to a pointing device, which means the rodent discloses the pointing device. Applicants emphasize that the mere fact that the terms are identical on their face does not necessarily mean they have the same meaning. While this example may be slightly exaggerated, the Office Action in the present case has similarly, improperly equated a term (program, meaning executable file) with another term (software object, which may include a type of program or function module) that is not a direct equivalent. Thus, Applicants respectfully submit that the Carter reference fails to support the rejection in the Office Actions. The reasoning of the Final Office Action is not logical, and the application of the Carter reference to the claims is misplaced.

The Final Office Action also fails to provide a prima facie case of anticipation under MPEP § 2131, for failing to make a rejection of at least certain features of the claimed invention. As Applicants stated in the previous Response, "Without conceding that Carter's application servers are the same as the objects recited in the independent claims, Applicants submit that the rejection is defective. The Final Office Action fails to make any assertion that objects of different subsystems are disclosed in the cited reference." The Advisory Action fails to address this defect of the rejection, and fails to address Applicants argument. Thus, the Advisory Action is incomplete and non-responsive, which should mean that Applicants have no duty to respond. However, in an attempt to resolve prosecution of this application, Applicants provide a response

herein. With regard to this point, the claims recite first and second subsystems, whereas Carter is only concerned with compatibility of application servers with a single system. The reference therefore fails to support a rejection of the invention as recited in Applicants' claims.

As Applicants have understood, the Carter reference is concerned with the compatibility of changes to the interfaces of the application servers. See, e.g., col. 1, line 64 to col. 2, line 23. Note that **compatibility of the interfaces** is essential in the Carter reference to make sure that the object servers (applications) are compatible with other applications. Carter defines incompatibility such that an update or modification to an **object server** causes the object server to **not support the same interfaces** as its predecessor object server. See col. 3, lines 29 to 41. The "preferred embodiment" of the so-called "compatibility analyzer" as described at col. 13, line 47 to col. 14, line 16, is explained as: "In the preferred embodiment, version compatibility analyzer 70 performs this comparison by comparing the type information of each class in new object server 64 to the type information of [an] identically named class in existing object server's type library 150." Applicants note the significant absence of any detecting of a change to a **software object**, in contrast to what is recited in Applicants' claims. As appears from the cited reference, Carter fails to consider changes at all to a software object, and is rather concerned with changes to interfaces **applications** (specifically, the object servers).

For the foregoing reasons, Applicants submit that the rejection as set forth in the Office Actions is improper. Applicants respectfully requests that the rejection be withdrawn and the claims allowed.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

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/Vincent H. Anderson/
Vincent H. Anderson, Reg. No. 54,962
Attorney for Applicant

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(503) 439-8778